O/kerosene/53

1953. **File No.** 21/53

P10E

Legal Department
G **BRANCH**

Subject: Opinions on the Kerosene

O-/kerosene/53

File No. 21/53.

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Office of the R.L.A.

The question for R.L.A's consideration is whether any action can be taken against Messrs. Budhsingh Amarsingh kerosene agent at Chalisgaon, District East Khandesh, under the Nasik District Kerosene Control Order, 1949, for selling kerosene oil at Naidongri station at higher rates and without having a licence from the District Magistrate, Nasik for doing business at Naidongri station.

Clause 3 of the Nasik District Kerosene Control Order, 1949, provides that an 'agent' means a duly appointed agent of one of the four oil companies doing business in the District or any other agent appointed by the District Magistrate with the previous approval of the Government. The District Government Pleader, Nasik in his opinion at page 89 has interpreted that the words 'doing business in the District' qualify the expression 'four oil companies' and not 'agent'. It is true that there ought to have been a comma after the words 'four oil companies' but the intention appears to be that the words 'doing business' should go with the 'agent'. Messrs. Budhsingh were agents of the Burmah Shell Oil Company and were doing business at Naidongri and Burmah Shell Oil Company undoubtedly carried on business also in Nasik District and therefore it is immaterial which interpretation will be acceptable to xxx the court as under either interpretation a prosecution would lie against Messrs. Budhsingh for breach of clause 4 of that Order for supplying kerosene without holding a wholesale trador's licence or a special permit. There will be some difficulty as the names of the four oil companies are not mentioned in clause 3 but it can be argued that there are only 4 big oil companies operating in this State viz.-

(1) The Burmah Shell; (2) Standard Vacum
(3) Caltex; and (4) Indo Burma.

It is stated that Messrs. Budhsingh were holding a wholesaler's licence under the East Khandesh Kerosene Oil Control Order, 1950. The licence was for carrying on the business in Chalisgaon only. But if the sale was completed outside East Khandesh District, there would be a breach of condition one of the licence. He can therefore be prosecuted for breach of

clause 11 of the East Khandesh Kerosene Oil Control Order, 1950 The Kerosene Licensing system has now been abolished; and no prosecution should be launched unless there is an element of blackmarketing as suggested by R.L.A. in another case from Virar-(Made) R.L.A's U.R. No.G-719, dated the 27th December 1952).

As regards selling kerosene above the controlled rate, there is no order in these papers showing the controlled rate in Nasik. The District Government Pleader has in his opinion at page 67 referred to the rate fixed in East Khandesh District by the District Magistrate at page 57. Under that order the wholesale rates are to be the rates fixed by the oil companies for F.O.R. delivery to Agents. If the sales took place in East Khandesh District then this Order would apply but the company has stated that no F.O.R. rates were fixed for Naidongri station. No action under that Order seems feasible. It is stated in the District Magistrate's Memorandum, dated the 15th May 1952 to the District Government Pleader, that the District Magistrate, Nasik had fixed Rs.6-0-9 per 4 gallons as wholesale price for sale by a wholesaler to a retailer. In this case the sale was by an agent to a wholesaler i.e. from wholesaler to wholesaler and no price seems to have been fixed. The agent charged Rs. 6-0-9 and as there is no provision in the Nasik District Kerosene Control Order, 1949 regarding price control, no action under the said order is feasibel for selling kerosene above the controlled rate.

Sd/- P.M.Lad

O.C. 17/1

Remembrancer of Legal Affairs.

U.R. to C.S.D., No G-48, dated the 19th January 1953.

Mjr/16/8/

4 Cs.

L.D.R.I.No.G-507, dt-17-5-53

Submitted.

2. For facts of the case, please see this office note underlying R.L.A's opinion No G-48, dated 19-1-1953.

3. The R.L.A. had advised the C.S.D. in his opinion No G-48, dated 19-1-53 that unless there was an element of blackmarketing no prosecution should be launched against Shri Budhsingh Amarsingh for supplying kerosene in Naidongri (Nasik) without holding a wholesale trader's licence or a special permit in contravention of caluse.4 of the Nasik District Kerosene Control Order, 1949 and for supplying kerosene at a place other than the place mentioned in condition 1 of the wholesaler's licence granted to him for doing business at Chalisgaon, (East Khandesh), in contravention of caluse 11 of the East Khandesh Kerosene Oil Control Order, 1950. TheC.S.D. sent the R.L.A's opinion to the D.M., Nasik and asked him to consult the D.G.P., Nasik The D.M., accordingly consulted the D.G.P. The D.G.P. is of the view that the element of balckmarketing was present in the transaction as the agent sold kerosene in Naidongri (Nasik District) at the rate higher than the rate fixed for Chalisgaon (East Khandesh). The District Government Pleader States that in another case filed against M/s. Amarsingh Budhisingh for having sold kerosene at a place other than the one mentioned in his licence, the accused was acquitted as prosecution failed to prove the sales and as he could prove that he was not present at the place where the sales were alleged to have taken place. According to the D.G.P. M/s. Amarsingh Budhsingh should be prosecuted for selling kerosene oil to his customers at a place other than the place mentioned in his licence and at the rate higher than the controlled rate in contravention of clause 11,

of the East Khandesh Kerosene Oil Control Order, 1950. The C.S.D. has again referred these papers to this office for advice, if any in the light of the D.C.D's remarks.

Mjr/16/8/

4 Cs.

Legal Department.

In the circumstances reported by the District Magistrate there is no objection to launch a prosecution for breach of clause 11 of the East Khandesh Kerosene Oil Control Order, 1950.

Sd/-

O.C.

Additional Secretary to Government.

U.R.R. C.S.D. No. C-III 367 dt. 27th June 1953

Mjr/16/8/

4 Cs.

Submitted.

Please see the office note of the C.S.D. at ppl 37-38 ante.

The facts of the case are as follows:-
A wagon containing 60 barrels of kersone oil was despatched to Dahanu Road by M/s M.N. Samant and Co. of Virar, who were consignee and the consignor themselves. The oil was sold to four different merchants. M/s. Samant and Co. are holding a wholesaler's licence. The place of business stated in condition No.2 of the licence is Virar Only. The sale of Kerosene oil made by them at Dahanu therefore in contravention of condition 2 of the licence. The Mamlatdar has forbidden the merchants from selling the kerosene oil purchased from M/s. Samant and Co. of Virar to consumers. It has also been further reported by the Mamlatdar that the merchants who have also purchased kerosene oil from M/s. Samant & Co. do not possess valid retail licences to deal in kerosene oil. The Mamlatdar is further collecting necessary evidence in this connection to see whether the dealers can be successfully presented under section 7 of the Essential Supplies (Temporary Powers) Act, 1946. The D.M., Thana in his letter addressed to the C.S.L. has stated that the orders issued in the Circular No. PGMRI 601, dated the 18-10-50 the restrictions on the export of kerosene oil outside Thana District were removed and according to the Circular No PGMRA-I-K, Oil dt 25-10-50, the consumers were allowed to purbhase any quantity of kerosene oil i.e. one tin or more from the wholesalers directly. According to D.M., M/s. Samant & Co. having sold kerosene oil in quantities of 7 barrels

or more cannot escape prosecution under clauses 8 & 12 of the Thana District Kerosene Oil Control Order, 1949 by taking shelter under the Circulars referred to above. The D.M., proposes to launch a prosecution against M/s. Samant & Co.. Before doing so, he wants the opinion in the matter. The papers have therefore been referred by the ..S.D. to this office for advice.

Mjr/16/8/
4 Cs.

Office of the R.L.A.

In this case it is clear that Messrs. Samant and Company have committed a breach of clauses 6 and 12 of the Thana District Kerosene Oil Control Order, 1949 read with conditions 2 and 4 of the licence. Before however deciding to launch prosecution against them it would be necessary to find out whether there was any element of balckmarketing in respect of the export of 60 barrels of Kerosene and sale thereof to four merchants of Dahanu Road. This information may therefore be called for from the District Magistrate, Thana and forwarded to this office.

Sd/- P.M.Lad

O.C. 26/12

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G-719, dated the 27th December 1952.

Mjr/16/8/

4 Cs.

Legal Department.

The question for legal advice is whether it wouldbe legally in order to forfeit Rs. 50/- from the deposit amount of Rs.500/- kept by Messrs. M.N. Saamnt for breach of the providings of the Thana District Kerosene Oil Control Order, 1949 as suggested by the District Magistrate, Thana.

Neither the Thana District Kerosene Oil Control Order, 1949 nor the form of the wholesaler's licence appended to it provide for taking of such a deposit. The deposit was taken by the District Magistrate as per instructions issued to them by the Director of Civil Supplies (Fuel) under the Civil Supplies Department Circular letter No.342/11458/IV-E, dated the 24th August 1949. Under that Circular the District Magistrates were instructed to ask the dealers in kerosene oil to furnish deposits against their licences. It was made clear in paragraph 2 of the circular that the deposit may be forfeited to Government either in full or in part for any minor breach of the order by the dealers and for reasons to be recorded by the Licensing Authority. The District Magistrate has stated that no agreemen was executed by the licensee. In these circumstances forfeitur would be possible only if the orders in parag aph 2 were broug to the notice of the licensee. It is possible that in pursuanc of the Government orders, the District Magistrates may have issued a circular letter to the dealers in similar terms and if in response to that they have paid the deposits, it can be said that they have agreed to the forfeiture. The Civil Supplies Department may therefore find out whether there is any evidence to show that orders in paragr phs 2 were brought to the notice of the dealers before or at the time they paid the deposit.

Sd/-

O.C. Additional Secretary to Government.

L.R. to C.S.D., No.G- 424, dated the 19th July 1953.

Mjr/1688/
4 Cs.